IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE B.PRAKASH RAO
WRIT PETITION NO : 13268 of 2003

Between:

1 Shaik Vasiuddin S/o. Imamoddin,
R/o. Bibinagar, Nalgonda.
2 Mohd. Ahmed Mujeebuddin S/o. Hasan Ali,
R/o. Nalgonda Town,
3 Khaja Nayeemuddin S/o. Khaja Moinuddin,
R/o. Rahamanbagh,Nalgonda Town,

..... PETITIONERS

AND

1 The Sub-Inspector of Police, Special Branch, Nalgonda.
Nalgonda.
2 The Sub-Inspector of Police, Nalgonda, (II) Town P.S.Nalgonda.
Nalgonda.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in registering crime No. 85/2003, 86/2003 and 87/2003 U/s. 420 of I.P.C. against the petitioners respectively as illegal, null, void without jurisdiction and to quash the same as abuse of process of court.

Counsel for the Petitioner:MR.M.S.PRASAD

Counsel for the Respondent Nos.1 and 2:GP FOR HOME.

The Court made the following :

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ORDER:

Heard both sides.

The petitioners, who belong to Dudekula community (Muslim) filed this writ petition, seeking for issuance of a writ of Mandamus declaring the action of 2nd respondent herein in registering the Cr.Nos.85,86 and 87 of 2003 against the petitioners 1 to 3 respectively for the offence punishable under Section 420 IPC as illegal, void and to set aside the same.

The case of the petitioners is that they belong to Dudekula community and on application being made by them, the Mandal Revenue Officer issued a certificate in their favour to the effect that they belong to Dudekula (Muslim) community, which falls under BC-B category, as notified by the Government, which they sought to produce the same at the time of selection of the employment by the Government.

However, on verification, as per the complaint filed now, it is stated that the 2nd respondent had informed that though the said certificate issued by the Mandal Revenue Officer is valid one, but the petitioners have obtained a certificate on a false representation. It is also pointed out that the fathers of the respective petitioners were also working in the Police Department, who have been shown as OC category. Therefore, all the petitioners have cheated and thus committed an offence punishable under Section 420 IPC.

The case of the petitioners is that as long as the certificates remain in force and not set aside as contemplated under the Law nor any proceedings are initiated for such cancellation, the respondents themselves cannot *suo motu* initiate any proceedings for such alleged offence. Hence, the writ petition.

Contesting the claim of the petitioners, the case of the

respondents is that having regard to the false certificate obtained by the petitioners, the cases have been booked correctly and therefore, they do not warrant any interdiction by this court under Article 226 of Constitution of India.

Considering the submissions and also on perusal of the material, it is seen the question that falls for consideration is whether the very initiation of the proceedings by the respondents themselves for the alleged offence under Section 420 IPC on the facts and circumstances is sustainable.

There is no dispute to the fact that the petitioners belong to the Dudekula community (Muslim), their parents were also working as Government employees, and they sought employment in the other services of the Government. But at last time they obtained certificate from the concerned Mandal Revenue Officer to show that they belong to BC-B category. There is also no dispute to the fact that no proceedings have been initiated as contemplated under the provisions of Andhra Pradesh (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 and Rules 1997 and Rules made there under for cancellation of such certificates. Now notices have been issued even otherwise there is no complaint what so ever in nature by the concerned Mandal Revenue Officer who has issued a certificate to show that there is any falsity in the claim made by the petitioners. It is only the respondent being a police official filed this complaint on the sole ground that it is on his field verification, it came to light that the candidates in fact did not belong to the said community nor entitled to such benefit as backward class and therefore, there is a cheating. Hence they filed the complaint.

It is needless to reiterate that especially on the basis of the specific legislation governing the field to take care of any such situation where the parties having obtained such false certificates, the authorities had ample power to initiate the proceedings and yet there is no such proceedings forthcoming from the proper persons in the

instant case and even the concerned Mandal Revenue Officer has also not initiated any such proceedings. In the absence of which, it is not open for the respondents herein to file any criminal case of this nature. Prima facie I do not find any justification to initiate the proceedings under the provisions of the Code of Criminal Procedure nor it can be said that there is any such offence as committed under Section 420 IPC committed by the petitioners.

Hence the petition is allowed. However, it is made clear that it is open for the concerned Authorities to take any such steps or initiate any such proceedings as contemplated under the Law for cancellation of the certificates.

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22-09-2004

To

1 The Sub-Inspector of Police, Special Branch, Nalgonda. Nalgonda.
2 The Sub-Inspector of Police, Nalgonda, (II) Town P.S.Nalgonda. Nalgonda.
3 Two CCs to the Government Pleader for Home, High Court Building, Hyderabad. (OUT).
4 Two C.D. copies.

Note:
Issue CC by one week.

(B/o)
sj